आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'A', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./**ITA No. 268/Mds/2016**
निर्धारण वर्ष / Assessment Year : 2003-04

Boomi Bottling Gas Co. Pvt. Ltd. 648, Anna Salai, Thousand Lights, Chennai – 600 006. [PAN: AAACB 1957C]	v.	Additional CIT, Company Range – I, Chennai – 600 034
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S.Ponraj, CA
प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, Jt. CIT

सुनवाई की तारीख/Date of Hearing : 25.11.2016
घोषणा की तारीख/Date of Pronouncement : 29.12.2016

आदेश /O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-1, Chennai ['CIT(A)' for short] dated 01.09.2015, dismissed the assessee's appeal contesting the levy of penalty u/s. 271E of the Income Tax Act, 1961 ('the Act' hereinafter) in respect of the assessment year (AY) 2003-04.

2. The assessee, a company in the business of bottling of LPG, was observed during the assessment proceedings to have had cash dealings with two proprietary firms of Shri KVP Bhoominathan, MD who, along with his wife were the directors in the appellant-company since inception. The said transactions were - after show-causing the assessee for the levy of penalty u/ss. 271-D & 271-E of the Act, i.e., for contravention of sections 269SS and 269T respectively, analyzed, examining them on the anvil of reasonableness. Finally, only transactions of repayment in cash, aggregating to Rs. 7,82,347/-, were considered as not proved to be occasioned or necessitated by a reasonable cause so as to save penalty u/s. 273-B of the Act, which reads as under:

> **Penalty not to be imposed in certain cases.**
>
> **'273B.** Notwithstanding anything contained in the provisions of clause (*b*) of sub-section (1) of section 271, section 271A, section 271AA, section 271B section 271BA, section 271BB, section 271C, section 271D, section 271E, section 271F, section 271G, clause (*c*) or clause (*d*) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section(1) sub-section (1) of section 272BBB or clause (*b*) of sub-section (1) or clause (*b*) or clause (*c*) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure'.

The assessee claiming the cash amounts to have been utilized for incurring agricultural expenses, the matter was remanded by the competent authority to the Assessing Officer (AO) for verification and report, and who reported that no evidence was produced to prove that the money paid to Shri Bhoominadhan had been utilized for the stated purpose. The repayments in cash being found as *sans* any reasonable cause, penalty u/s. 271E was levied. No improvement in it's case being made, the same was confirmed in appeal, so that the assessee is in second appeal.

3. Before us, the assessee's contentions were three-fold. One, that acceptance and repayment of money was not by way of deposit, but only by way of a current

account maintained by Shri Bhoominathan with the company and, thus, outside the ambit of sections 269SS/269T. Two, the genuineness of the transaction was not in doubt, so that the provisions enacted to prevent evasion of tax by passing fictitious entries in the books of account, would have no application. Finally, that cash was required for incurring agricultural expenses, which had to be incurred in cash, particularly as agricultural lands were located in remote areas. The ld. Departmental Representative (DR) would object, stating that no reasonable cause for making repayment in cash has been shown, much less proved, as is the mandate of section 273-B, eschewing penalty.

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4. We have heard both the parties and perused the material on record.

4.1 Sections 269SS and 296T proscribe acceptance and repayment respectively of loans and deposits in excess of a threshold limit by any person otherwise than by way of an account payee cheque or account payee draft. Sections 271D and 271E postulate penalty where the afore-said sections are respectively contravened, which of course is saved on a reasonable cause being shown (s.273B). The genuineness of a loan/deposit is not in issue while considering the applicability or otherwise of s. 271D or s. 271E. If it is not genuine, how could it be said to be a loan or deposit? That is, how could it be in law regarded as a loan/deposit in the first place? It is the mode of the transaction of a loan or deposit that is the subject matter of regulation by law and, thus, of penalty, i.e., on its violation. The only issue relevant, while considering the validity of the levy of penalty, is the reason for having accepted a loan or deposit in contravention of the provision, since upheld as constitutionally valid (*Asst. Director of Inspection (Inv.) v. Kum. A.B.Shanthi* [2002] 255 ITR 258 (SC)). Reference in this context may be made to the decision in *K.V. George v. CIT* [2014] 102 DTR 167 (Ker), upholding the order by the tribunal rejecting that contention relying on the decision in *Kum. A.B.Shanthi* (supra). Why, there are decisions galore in the context of s. 40A(3), stipulating the condition of payment - for its deduction in computing business income, of an expenditure by crossed

cheque, i.e., even where otherwise allowable, holding that the genuineness of the expenditure is *per se* not relevant; the section stipulating the criterion of payment by a specified mode for its allowability. True, even as several considerations may motivate a legal provision, it has all the same to be interpreted in terms of and having regard to its clear language. If the intention is not found in the language implied by the statue, it is the edict of the legislature, where is it to be found (*Britannia Industries Ltd. v. CIT* [2005] 278 ITR 546 (SC). Reference in this context may also to be made to the decision in *Kum. A.B.Shanti* (supra).

4.2 The assessee's next plea is of the amounts being required for incurring agricultural expenses is also found to be no more than a bald statement. It is firstly not proved, with both Revenue authorities recording a clear finding of the claim being not substantiated. In fact, the transactions of acceptance and repayment of funds were found between the assessee-company and the two proprietary concerns of its MD, Shri KVP Bhoominathan, which were in fact having regular transactions in cash even in the past. There is nothing to suggest that the money was in fact paid for incurring agricultural expenses. As posed during hearing itself: Why could not the payee maintain a bank account with the same bank as the assessee-company - and which, for all of you know, may well be the case, enabling immediate transfer of funds. The existing technological regime in fact allows instantaneous transfer of funds through the electronic mode (also excepted). There is, in fact, both acceptance as well as repayments by the company in the form of cheques as well, i.e., through the banking system. The argument is even otherwise not sound as the land/s is situate far away, i.e., in remote areas, so that the transporting cash is itself a risky, cumbersome and time consuming affair. There is nothing to show that the cash was immediately required there or the said area is not serviced by the banking system. And if the same was required in Chennai, the same could well be drawn from the Director's own account by transferring the funds thereto. Indeed, what was the balance in his account on the relevant date/s is also not known, as it may well be that he has sufficient balance in his account which could be withdrawn.

The transactions are in fact found to be with the proprietary firms and not with the director *per se*. The plea is only specious one, devoid of any substance. In fact, even where proved to be, as contended, for incurring expenses, the explanation has to be ultimately tested on the anvil of a reasonable cause, and that the amount was utilised for a particular purpose does not by itself translate into a reasonable cause. The finding by the Revenue as to no reasonable cause having been advanced, much less proved, for the default, is thus to be upheld.

4.3 We, finally, consider the assessee's third argument, i.e., amounts accepted and repaid by the assessee-company as being not a loan or deposit, so that s. 269T is not attracted, which is made with reference to the decision in *CIT v. Idhayam Publication Pvt. Ltd.* [2006] 285 ITR 221 (Mad). We have carefully perused the said decision. In that case the Hon'ble jurisdictional High Court held that the current (running) account of a director/shareholder with a private limited company on which no interest was being charged, is not a loan or deposit. There was accordingly no contravention of s. 269SS, so as to attract s. 271D of the Act. The facts of the case are contended to be at par. Our understanding of the ratio of the said decision is that the Revenue should establish that what stands received (paid) falls within the meaning of the term 'loan' or 'deposit' under the relevant provision - s. 269T in the present case.

We observe that there has been an amendment in law since; the cited decision pertaining to AY 1992-93. The penalty in the instant case is u/s. 271E for violation of s. 269T. The said section, which was earlier confined to repayment of deposits only, stands extended to 'loans' as well, i.e., on its' substitution by Finance Act, 2002, w.e.f. 01.06.2002. The assessee-company has reflected the outstanding liability, both as at the beginning (31.03.2002) and the close of the year (i.e., 31.03.2003), in its audited accounts, as an unsecured loan (by the Director Shri KVP Bhoominathan). However, s. 271E - which penalizes contravention of s. 269T, stands correspondingly amended, i.e., by extending it to loans, by Finance Act, 2003, w.e.f. 01.06.2003. In other words, the section (271E) was during the

relevant previous year, i.e., f.y. 2002-03, applicable only to 'deposits'. The same signify a different concept from 'loan', as explained by the Hon'ble jurisdictional High Court in *A.M.Shamsudeen v. Union of India* [2000] 244 ITR 266 (Mad), concurring with *Baidyanath Plastic Industries Pvt. Ltd. v. ITO* [1998] 230 ITR 522 (Del). In the present case, the amounts are deposited and withdrawn at will, i.e., as and when required. Deposit is specifically defined in s. 269T as a deposit of money which is repayable after notice or repayable after period. The demand deposit in the present case may violate the provisions of the Companies Act, 1956, but that does not concern us here. The same therefore cannot be regarded as a 'deposit' within the meaning of the term as defined u/s. 269T. Even if regarded as a 'loan', the same would not be liable for penalty for the current year. The assessee's this plea is accordingly accepted, so that it succeeds in result.

5. In the result, the assessee's appeal is allowed.

Order pronounced on December 29, 2016 at Chennai.

Sd/-	Sd/-
(जी. पवन कुमार)	(संजय अरोड़ा)
(G. Pavan Kumar)	(Sanjay Arora)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the December 29, 2016.
Edn.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF